

AMENDED IN ASSEMBLY MAY 14, 2003

AMENDED IN SENATE APRIL 24, 2003

AMENDED IN SENATE APRIL 21, 2003

AMENDED IN SENATE APRIL 7, 2003

SENATE BILL

No. 39

Introduced by Senator Perata
(Principal coauthor: Assembly Member Chan)

January 3, 2003

An act relating to the Oakland Unified School District, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 39, as amended, Perata. Oakland Unified School District: emergency loan.

(1) Existing law provides for emergency apportionments to school districts subject to specified conditions including, in certain circumstances, the repayment of an emergency loan over a period of no more than 10 years and the appointment by the Superintendent of Public Instruction of an administrator who would exercise the powers and responsibilities of the governing board of the school district.

This bill would require the Superintendent of Public Instruction to assume all the rights, duties, and powers of the governing board of the Oakland Unified School District and to appoint an administrator to act on behalf of the Superintendent of Public Instruction in exercising the superintendent's authority over the school district. The bill would authorize the administrator, with the approval of the superintendent, to

enter into agreements on behalf of the school district and to change any existing district rules, policies, or practices, as provided. *The bill would require the administrator to be added by the district as an employee for certain insurance purposes.*

The bill would specify that the governing board of the school district is not to receive any compensation during the period of the superintendent's authority over the district. The bill would authorize the administrator to terminate the employment of certain district personnel, as provided.

The bill would continue the authority of the superintendent and the administrator over the school district until certain enumerated conditions are met, including the completion of ~~assessment and~~ *an improvement plan* for the school district.

The bill would require the administrator to consider, on a monthly basis, or more frequently if desired, information from one or more specified groups. The bill would require the County Office Fiscal Crisis and Management Assistance Team (FCMAT) to ~~update comprehensive assessments and recovery plans~~ *prepare an improvement plan for the school district, as provided*, by July 1, 2003, and would require the FCMAT to report on the implementation of ~~those plans~~ *the plan*, as specified.

This bill would appropriate \$100,000,000 from the General Fund to the Superintendent of Public Instruction for the purpose of providing the Oakland Unified School District with an emergency loan. The bill would authorize loan funds to be disbursed from the proceeds of the loan only if the trustee and FCMAT jointly determine that disbursement is necessary. The bill would require the district to repay the loan as a straight line loan amortized over a 20-year term, with interest as provided. *The bill would authorize the district from June 1, 2003, to June 30, 2005, inclusive, to sell, sell back, lease, or leaseback certain surplus property of the district, as provided, and use the proceeds from that transaction to reduce or retire the emergency loan.*

The bill would require the school district, except as specified, to bear 100% of all costs associated with implementing its provisions, thereby imposing a state-mandated local program. ~~The bill would require the administrator to be added as an employee of the school district for certain insurance purposes.~~

(2) This bill would declare that due to the unique circumstances relating to the Oakland Unified School District's fiscal emergency, a general statute cannot be made applicable.



(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason and would provide that with regard to any other mandates, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:
3 (a) Providing a quality education that meets the unique needs
4 of Oakland public school pupils is a fundamental ~~interest~~ goal that
5 should not be jeopardized.
6 (b) In late August 2002, the Oakland Unified School District
7 became aware of a negative general fund balance for the 2001–02
8 fiscal year, and of potential deficits in its 2002–03 budget, and
9 thereafter, promptly reported this information to the Alameda
10 County Office of Education.
11 (c) The Oakland Unified School District is projected to run out
12 of cash in May of 2003 and will be unable to pay school employees
13 unless immediate action is taken.
14 ~~(d) The Oakland Unified School District and its community~~
15 ~~have the will and ability to continue the key educational reforms~~
16 ~~that have benefited Oakland public school pupils in the last three~~
17 ~~years and to make difficult decisions in order to immediately~~
18 ~~eliminate all further overspending by the district.~~
19 ~~(e)~~
20 (d) Despite initial budget cuts for the 2002–03 fiscal year
21 exceeding fourteen million dollars (\$14,000,000) and additional
22 budget cuts and adjustments of seventeen million dollars
23 (\$17,000,000), the Oakland Unified School District will have a

1 negative fund balance at the close of the current fiscal year and
2 requires a loan from the State of California.

3 ~~(f) In contrast to the circumstances surrounding other school~~
4 ~~districts that have recently received state loans, there have not been~~

5 ~~(e) While in need of a loan from the State of California, there~~
6 ~~have not been any accusations of intentional mismanagement or~~
7 ~~fraud in the Oakland Unified School District. The budget deficits~~
8 ~~at the Oakland Unified School District were inadvertently hidden~~
9 ~~by an inadequate system of checks and balances in the district's~~
10 ~~financial services division, and were exacerbated by declining~~
11 ~~enrollment, increases in health care costs, and state education~~
12 ~~budget cuts.~~

13 ~~(g) Despite its financial condition, the Oakland Unified School~~

14 ~~(f) The Oakland Unified School District has made~~
15 ~~demonstrable academic improvements over the last few years,~~
16 ~~witnessed by test score improvements, more fully credentialed~~
17 ~~teachers in Oakland classrooms, and increased parental and~~
18 ~~community involvement.~~

19 ~~(g) The community of the Oakland Unified School District has~~
20 ~~the will to continue the key educational reforms that have benefited~~
21 ~~Oakland public school pupils in the last three years and to support~~
22 ~~difficult decisions in order to immediately eliminate all further~~
23 ~~overspending by the district.~~

24 SEC. 2. (a) It is the intent of the Legislature that the state
25 administrator appointed pursuant to this act should work with the
26 present administrators and governing board of the Oakland
27 Unified School District to identify the procedures and programs
28 currently implemented by the district that have proven to do one
29 or more of the following:

30 (1) Significantly raise pupil achievement.

31 (2) Improve pupil attendance.

32 (3) Lower pupil dropout rate.

33 (4) Increase parental involvement.

34 (5) *Attract, retain, and train a quality teaching staff.*

35 (b) It is the intent of the Legislature that these identified
36 procedures and programs should be protected, maintained, and
37 expanded as the district's budget allows.

38 SEC. 3. The Legislature finds and declares that because of the
39 fiscal emergency in which the Oakland Unified School District
40 finds itself and in recognition of the March 27, 2003, request of the

governing board of the district for a loan from the state, it is necessary that the Superintendent of Public Instruction assume control of the district in order to ensure the return to the district of fiscal solvency.

SEC. 4. (a) The Superintendent of Public Instruction shall immediately assume all of the rights, duties, and powers of the governing board of the Oakland Unified School District.

(b) The Superintendent of Public Instruction, in consultation with the Alameda County Superintendent of Schools, shall appoint an administrator to act on behalf of the Superintendent of Public Instruction in exercising the authority described in this act. The Superintendent of Public Instruction or the state-appointed administrator may, on a short-term basis, employ at district expense any staff necessary to assist the administrator, including, but not limited to, a certified public accountant. The administrator shall have recognized expertise in management and finance. The administrator shall serve under the direction and supervision of the Superintendent of Public Instruction until terminated by the Superintendent of Public Instruction at his or her discretion. The Superintendent of Public Instruction shall consult with the Alameda County Superintendent of Schools prior to terminating the administrator. The Superintendent of Public Instruction, operating through the administrator, may do all of the following:

(1) Implement substantial changes in the fiscal policies and practices of the Oakland Unified School District, including, if necessary, the filing of a petition under Chapter 9 of the federal Bankruptcy Act (*11 U.S.C. Sec. 901 et seq.*) for the adjustment of indebtedness of the district.

(2) Revise the educational program of the Oakland Unified School District to reflect realistic income projections, in response to the dramatic effect of the changes in fiscal policies and practices upon educational program quality and the potential for the success of all pupils. To the extent allowed by district finances, it is the intent of the Legislature that the revised program shall maintain the core educational reforms that have led to districtwide improvement of academic achievement, including, but not limited to, educational reforms targeting underperforming schools, new small schools, and other reforms that have demonstrated measurable success.

(3) Encourage all members of the school community to accept a fair share of the burden of the fiscal recovery of the Oakland Unified School District.

(4) Consult, for the purposes described in this act, with the governing board of the Oakland Unified School District, the exclusive representatives of the employees of the district, parents, and the community.

SEC. 5. (a) (1) To facilitate the appointment of the administrator and the employment of any necessary staff, for the purposes of this act, the Superintendent of Public Instruction is exempt from the requirements of Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code and Part 2 (commencing with Section 10100) of the Public Contract Code.

(2) The salary and benefits of the state-appointed administrator shall be established by the Superintendent of Public Instruction and paid by the Oakland Unified School District.

(3) During the tenure of his or her appointment, the administrator, if otherwise an employee of the state or of the county superintendent, is an employee of the school district, but shall remain in the same retirement system under the same plan that has been provided by his or her employment with the state or the office of the county superintendent. Upon the expiration or termination of the appointment, the administrator shall have the right to return to his or her former position, or to a position at substantially the same level as that position, if that former position was with the state or the office of the county superintendent. The time served in the appointment shall be counted for all purposes as if the administrator had served that time in his or her former position with the state or with the office of the county superintendent.

(b) For the period of time during which the Superintendent of Public Instruction exercises the authority described in subdivision (a) of Section 4, the governing board of the Oakland Unified School District ~~has no rights, duties, or powers~~ *shall serve as an advisory body reporting to the administrator, but has no rights, duties, or powers*, and is not entitled to any stipend, benefits, or other compensation from the district.

(c) Notwithstanding any other provision of law, the administrator may, after according the employee reasonable notice

1 and opportunity for hearing, terminate the employment of any
 2 district superintendent of schools, or deputy, associate, or assistant
 3 superintendent of schools, or other person employed in an
 4 equivalent capacity, whose duties include overseeing, managing,
 5 or otherwise directing the fiscal and budgetary operations of the
 6 Oakland Unified School District, and who is employed by the
 7 Oakland Unified School District under a contract of employment
 8 renewed after the effective date of this act if the employee fails to
 9 document, to the satisfaction of the administrator, that before the
 10 effective date of this act he or she either advised the governing
 11 board of the district, or his or her superior, that actions
 12 contemplated or taken by the governing board could result in the
 13 fiscal insolvency of the district, or took other appropriate action to
 14 avert that fiscal insolvency.

15 (d) With the approval of the Superintendent of Public
 16 Instruction, the administrator may enter into agreements on behalf
 17 of the school district and, subject to any contractual *and statutory*
 18 obligation of the school district, *including the obligation to meet*
 19 *and confer in good faith with the exclusive bargaining*
 20 *representative of affected employees of the district*, change any
 21 existing school district rules, regulations, policies, or practices as
 22 necessary for the effective implementation of the improvement
 23 ~~plans specified in~~ *plan specified in Section 7 of this act.*

24 (e) The authority of the Superintendent of Public Instruction
 25 and the administrator pursuant to this act shall continue until all of
 26 the following conditions occur:

27 (1) Two complete fiscal years have elapsed following the
 28 appointment of the administrator or, at any time after one complete
 29 fiscal year has elapsed following that appointment, if the
 30 ~~state-appointed~~ administrator determines, and so notifies the
 31 Superintendent of Public Instruction, that future compliance by
 32 the Oakland Unified School District with the improvement ~~plans~~
 33 *plan specified in Section 7 of this act* is probable.

34 (2) The County Office Fiscal Crisis and Management
 35 Assistance Team (FCMAT) completes the ~~assessment and~~
 36 improvement ~~plans~~ *plan* specified in Section 7 of this act.

37 (3) FCMAT, after consultation with the ~~state-appointed~~
 38 administrator, determines that for at least the immediately
 39 previous six months the school district made substantial and

1 sustained progress in implementation of the plans in the major
2 functional area.

3 (4) The ~~state-appointed~~ administrator certifies that all
4 necessary collective bargaining agreements have been negotiated
5 and ratified, and that the agreements are consistent with the terms
6 of the ~~recovery and improvement plans~~ *improvement plan*
7 *specified in Section 7 of this act*.

8 (5) The district completes all reports required by the
9 Superintendent of Public Instruction and the ~~state-appointed~~
10 administrator.

11 (6) The Superintendent of Public Instruction concurs with the
12 assessment of the ~~state-appointed~~ administrator and FCMAT that
13 future compliance by the Oakland Unified School District with the
14 ~~improvement plans~~ *plan* described in Section 7 of this act and the
15 multiyear financial recovery plan described in paragraph (2) of
16 subdivision (a) of Section 41327 of the Education Code is
17 probable.

18 (f) If all of the conditions specified in subdivision (e) occur, the
19 governing board of the Oakland Unified School District shall
20 regain all of its rights, duties, and powers.

21 (g) Notwithstanding subdivision (f), if the Oakland Unified
22 School District violates any provision of the ~~improvement plans~~
23 *plan specified in Section 7 of this act*, after the governing board of
24 the school district regains all of its rights, duties, and powers
25 pursuant to subdivision (f), the Superintendent of Public
26 Instruction may reassume, in accordance with this section, all of
27 the rights, duties, and powers of the governing board of the school
28 district. The Superintendent of Public Instruction shall
29 subsequently return to the governing board of the school district
30 all of its rights, duties, and powers reassumed under this
31 subdivision if he or she determines that the conditions of
32 subdivision (e) are satisfied.

33 SEC. 6. The administrator shall consider, on a monthly basis,
34 or more frequently if so desired by the administrator, information
35 ~~relating to the fiscal condition of the district~~ from one or more
36 groups from each of the following categories:

- 37 (a) The governing board of the school district.
38 (b) Any advisory council of the school district.
39 (c) Any parent-teacher organization of the school district.



(d) Representatives from the community in which the school district is located.

(e) The County Office Fiscal Crisis and Management Assistance Team.

(f) The Superintendent of Public Instruction.

SEC. 7. (a) On or before July 1, 2003, the County Office Fiscal Crisis and Management Assistance Team (FCMAT) shall ~~update~~ *prepare an improvement plan for the Oakland Unified School District by updating* the January 2000 comprehensive assessments and recovery plans of the Oakland Unified School District.

(b) Based upon progress reports prepared pursuant to subdivision (c), FCMAT shall recommend to the Superintendent of Public Instruction those designated functional areas of school district operation that it determines are appropriate for the governing board of the school district to assume.

(c) Commencing 30 days following the effective date of this act and in September 2003, and each six months thereafter until September 2004, FCMAT shall file a written status report with the appropriate fiscal and policy committees of the Legislature, including any special committees created for the purpose of reviewing the reports, and with the Members of the Legislature who represent the Oakland Unified School District, the advisory board of the school district, the Superintendent of Public Instruction, the Director of Finance, and the Secretary for Education. The reports shall include the progress that the Oakland Unified School District is making in meeting the recommendations of the improvement ~~plans~~ *plan* developed pursuant to this ~~act~~ *section*.

SEC. 8. (a) The Oakland Unified School District shall bear 100 percent of all costs associated with implementing this act, except for the activities of the County Office Fiscal Crisis and Management Team progress reports specified in Section 7 of this act.

(b) The Oakland Unified School District shall add the administrator as a covered employee of the school district for all purposes of errors and omissions liability insurance policies.

SEC. 9. (a) The sum of one hundred million dollars (\$100,000,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for apportionment to the

1 Oakland Unified School District for the purpose of an emergency
2 loan. In order to qualify for the loan, the district shall comply with
3 *Article 2 (commencing with Section 41320) and Article 2.5*
4 (commencing with Section 41325) of Chapter 3 of Part 24 of the
5 Education Code to the extent those provisions are consistent with
6 the conditions specified in this act.

7 (b) Funds may be disbursed from the proceeds of the loan only
8 if the trustee and the County Office Fiscal Crisis and Management
9 Assistance Team jointly determine that the disbursement is
10 necessary.

11 (c) Based on the needs of the district to meet its obligations, the
12 Superintendent of Public Instruction may direct the Controller to
13 disburse, on a monthly basis, specific amounts of the emergency
14 loan before the approval of all of the conditions established by this
15 act.

16 (d) For the fiscal year in which the loan moneys are disbursed
17 and each fiscal year thereafter, the Controller, or his or her
18 designee, shall cause an audit to be conducted of the books and
19 accounts of the district, instead of the audit required by Section
20 41020 of the Education Code. At the discretion of the Controller,
21 the audit may be conducted by the Controller, his or her designee,
22 or an auditor selected by the county superintendent and approved
23 by the Controller. The costs of the audit shall be paid by the district.
24 The audits shall be performed until the Superintendent of Public
25 Instruction, in consultation with the Controller, determines that the
26 district is financially solvent, but may not cease being performed
27 earlier than one year following the implementation of the plan
28 required by Section 7 nor later than the time the emergency loan,
29 including interest, is repaid. In addition, the Controller shall
30 conduct quality control reviews pursuant to subdivision (c) of
31 Section 14504.2 of the Education Code.

32 SEC. 10. (a) Notwithstanding subparagraph (A) of
33 paragraph (2) of subdivision (a) of Section 41327 of the Education
34 Code, the Oakland Unified School District shall repay the
35 emergency loan incurred pursuant to Section 9 of this act as a
36 straight line loan amortized over a 20-year term. This amount shall
37 be repaid by the district, plus interest calculated at a rate equal to
38 the rate earned by the Pooled Money Investment Account on the
39 date this act becomes effective, for a period not to exceed 20 years.



(b) If a required payment is not made within 60 days after a scheduled date, the Controller shall pay the defaulted loan payment of principal and interest by withholding that amount from the next available payment that would otherwise be made to the county treasurer on behalf of the district pursuant to Section 14041 of the Education Code. However, subject to the approval of the Department of Finance, the amount withheld may be in monthly amounts as determined by an agreement between the Oakland Unified School District and the Controller during the period beginning with the next available apportionment through the month preceding the next scheduled payment.

(c) The Director of Finance may amend the payment schedule set forth in subdivision (a) if the director concludes that the amendment is warranted and is in the best interests of both the state and the Oakland Unified School District education program. Upon that determination, the director shall notify the Joint Legislative Budget Committee that the payment scheduled will be changed on the date that is 90 days from the date of notification if the Legislature is in session. If the 90-day period ends during a recess of the Legislature or while the Legislature is not in session, the 90-day period shall be extended until the Legislature reconvenes. Amendments to the payment schedule shall defer the unpaid portion of a repayment of the earliest fiscal year in which no other repayment is scheduled. Interest shall accrue on the unpaid portion of a repayment from the scheduled due date until the time the payment is actually made. The interest charge shall be the rate equal to the daily investment rate of the Pooled Money Investment Account on the date the pay schedule is changed.

(d) The school district may repay its loan obligation without incurring any prepayment penalties.

SEC. 11. *(a) Notwithstanding Sections 17456, 17457, 17462, and 17463 of the Education Code, or any other law, from June 1, 2003, to June 30, 2005, inclusive, the Oakland Unified School District may sell, sell back, lease, or leaseback, surplus property owned by the district for at least 40 years, to any nonprofit, for profit, or governmental entity, and use the proceeds from the sale, sale back, lease, or leaseback to reduce or retire the emergency loan provided in Section 9 of this act. The sale or lease of property pursuant to this subdivision is not subject to Section 17459 or 17464 of the Education Code.*

1 **(b)** *This subdivision applies only to surplus property that is*
2 *currently used to house administrative services or used as*
3 *warehouse space.*

4 **SEC. 12.** The Alameda County Superintendent of Schools
5 maintains the responsibility to superintend school districts under
6 its jurisdiction. This act does not remove any statutory or
7 regulatory rights, duties, or obligations from the county
8 superintendent of school.

9 ~~**SEC. 12.**~~

10 **SEC. 13.** The Department of Finance is authorized to redirect
11 funds appropriated in Item 6110-107-0001 of Section 2.00 of the
12 Budget Act of 2002 and from the corresponding item and section
13 number of the Budget Act of 2003 for the purposes of funding
14 activities of the County Office Fiscal Crisis and Management
15 Assistance Team specified in this act.

16 ~~**SEC. 13.**~~

17 **SEC. 14.** The Legislature finds and declares that due to unique
18 circumstances relating to the fiscal emergency in the Oakland
19 Unified School District, a general statute cannot be made
20 applicable within the meaning of Section 16 of Article IV of the
21 California Constitution.

22 ~~**SEC. 14.**~~

23 **SEC. 15.** No reimbursement is required by this act pursuant
24 to Section 6 of Article XIII B of the California Constitution
25 because the only costs that may be incurred by a local agency or
26 school district are the result of a program for which legislative
27 authority was requested by that local agency or school district,
28 within the meaning of Section 17556 of the Government Code and
29 Section 6 of Article XIII B of the California Constitution.

30 ~~**SEC. 15.**~~

31 **SEC. 16.** This act is an urgency statute necessary for the
32 immediate preservation of the public peace, health, or safety
33 within the meaning of Article IV of the California Constitution and
34 shall go into immediate effect. The facts constituting the necessity
35 are:

36 In order to address the fiscal emergency in which the Oakland
37 Unified School District finds itself and to ensure that it meets its



- 1 cash obligations for this fiscal year, it is necessary that this act take
- 2 effect immediately.

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